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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,596	10/30/2001	James P. Baltz	3030-67663	6528

7590 12/16/2004

BARNES & THORNBURG  
11 South Meridian Street  
Indianapolis, IN 46204

EXAMINER
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HWU, DAVIS D

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/016,596

Applicant(s)

BALTZ ET AL. 

Examiner

Davis D. Hwu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 9, 10, 13, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 6-8, 11, 12, 14, 15, 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Figure 2</u>                           |

### **DETAILED ACTION**

1. Applicant's appeal brief filed September 13, 2004 is acknowledged and entered.
2. This application is being reopened for prosecution in light of the new prior art references.
3. Applicant's appeal brief has been considered, however, it is now moot in view of the new grounds of rejection.

### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 4, 5, 9, 10, 13, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaccard.

Jaccard shows an apparatus providing at least one first opening and a first level 12 which indicates when a device received in the at least one first opening is in a first orientation (see Figure 2 attached herein). The device of Jaccard is fully capable of positioning an air cap of a pneumatically aided atomizer having air horns extending therefrom and indicating when the horns received in the at least one first opening are in a first orientation. The device of Jaccard includes a first surface extending generally in a first direction and a second surface extending generally in a second direction as recited in claim 4 (see Figure 2 attached herein) and wherein the at least one first opening extends through the device from the first surface to the second surface as recited in claim 5. Regarding claims 9 and 10, the first level will indicate when the device received in the at least one first opening is in a vertical orientation or a horizontal

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orientation since the apparatus of Jaccard can be oriented in vertical or horizontal orientations during usage. The device of Jaccard carries out the methods of claims 13, 16, and 17.

***Allowable Subject Matter***

6. Claims 2, 3, 6-8, 11, 12, 14, 15, 18, and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Cosenza is pertinent to Applicant's invention.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis D. Hwu whose telephone number is 703-305-1663. The examiner can normally be reached on 8:00-4:30.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 703-308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



Davis Hwu



David A. Scherbel  
Supervisory Patent Examiner  
Group 3700